



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 7, 2013

Mr. James Driskill
Assistant Director of Community Relations and Marketing
Communications Office
Frisco Independent School District
5515 Ohio Drive
Frisco, Texas 75035

OR2012-19304A

Dear Mr. Driskill:

You ask this office to reconsider Open Records Letter No. 2012-19304 (2012), which this office issued on November 30, 2012. We note a governmental body is prohibited from asking this office to reconsider a decision issued under section 552.306 of the Government Code. *See* Gov't Code § 552.301(f). Furthermore, you have not demonstrated this office made an error in issuing the prior ruling. Nevertheless, we have determined the prior ruling should be corrected for purposes of due process. *See id.* §§ 552.306, .352. Accordingly, we hereby withdraw the prior ruling. This decision is substituted for Open Records Letter No. 2012-19304 and serves as the correct ruling. This ruling was assigned ID# 479007.

The Frisco Independent School District (the "district") received a request for the most recent staff directory of all district employees and substitutes that includes certain specified information. You inform us the district will redact information subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code.¹ You claim a portion of the requested information is excepted from disclosure under

¹Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body. *See* Gov't Code § 552.117(a)(1). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c).

section 552.136 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

We must address the district's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). You inform us the district received the request on September 14, 2012. You state the district sought clarification of the request, which it received on September 18, 2012. *See id.* § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified). Accordingly, the district's fifteen-business-day deadline was October 9, 2012. However, you submitted a copy or representative sample of the responsive information on December 7, 2012. Therefore, we find the district failed to comply with the requirements of section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released, unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Gov't Code* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). Generally, a compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because section 552.136 of the Government Code makes information confidential and can provide a compelling reason to withhold information from disclosure, we will consider your claim under section 552.136 for the submitted information.

Section 552.136(b) of the Government Code states “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected,

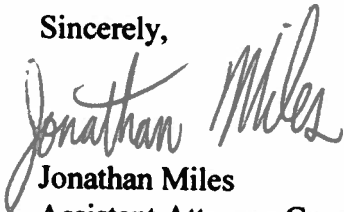
²We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). An access device number is one that may be used to 1) obtain money, goods, services, or another thing of value, or 2) initiate a transfer of funds other than a transfer originated solely by paper instrument, and includes an account number. *See id.* § 552.136(a) (defining “access device”). You state the information at issue, which consists of employee identification numbers, can be used to make benefit election changes. Accordingly, we find the information at issue constitutes access device numbers for purposes of section 552.136. Therefore, we find the district must withhold the employee identification numbers, which you have marked, under section 552.136 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

Ref: ID# 479007

Enc. Submitted documents

c: Requestor
(w/o enclosures)